

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2335 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ACHARSHREE NARENDRAPRASADJI AND ORS., TRUSTEES,
VADODARA SWAMINARAYAN MANDIR GAUSHALA TRUST

Versus

ASHABHAI ADARBHAI PADHIAR

Appearance:

MR JITENDRA M PATEL & MR NN GANDHI for Petitioners
None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/09/96

ORAL JUDGMENT

Heard learned counsel for the petitioner. The petitioner-trust, through its trustees, has filed this Special Civil Application before this Court and the

challenge has been made therein to the judgment of the Gujarat Revenue Tribunal, Ahmedabad, dated 23rd July 1981, made in Revision Application Nos.TEN B.A.1164/79 and 1165/79.

2. The Mamlatdar, in respect of two lands of the petitioner, initiated suo-motu proceedings u/s.32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the 'Act 1948'), treating the respondent to be a tenant of those lands. Notice has been given by the Mamlatdar to the Acharya Shri Narendraprasadj Maharaj as a custodian of the trust. In the proceedings, on behalf of all trustees as their Power of Attorney holder, Shri Revabhai Muljibhai Patel appeared. In the proceedings before the Mamlatdar, Shri Revabhai Muljibhai Patel was examined as a Power of Attorney holder of trustees and one of the trustees, Shri Ashabhai Bhagat Motibhai had also been examined. The Mamlatdar has held that the respondent herein was not a tenant on 1.4.57, 15.11.69 or at any point of time of the lands in question. Consequently the proceedings initiated by him u/s.32G of the Act 1958 have been dropped. The respondent filed two appeals against the judgment and order of the Mamlatdar before the Deputy Collector (Baroda) and those appeals also came to be dismissed on 29th September 1979. Thereafter he has taken up the matter in revision application and the said revision application has been allowed under the impugned order. Hence the petitioner filed this Special Civil Application before this court.

3. The respondent, in the revision application, has not challenged the orders of the lower authorities on merits but he has raised two preliminary objections that in the proceedings, all the trustees are necessary parties and as only one trustee has been joined the matter is required to be remanded back so that the respondent may join all the trustees as opponents. Next preliminary objection has been raised that the Power of Attorney holder has given deposition in the matter before the Mamlatdar who has no right to plead the case. Both these preliminary objections, raised by the respondent found favour of the Tribunal and the orders of the Mamlatdar and the appellate authority were set aside and the matter has been remanded back to hold fresh inquiry.

4. Shri A.J. Patel, learned counsel for the petitioner contended that the Tribunal has committed serious illegality in remanding the matter back for fresh inquiry to the Mamlatdar. The Trust was a registered public trust and the Mamlatdar has given notice to only

one of the trustees. It was a case where inquiry has to be held for the tenant as to whether he can be considered to be a deemed purchaser and as such, all the trustees were not necessary parties. The trustees could have raised this objection and not the respondent. So far as the second preliminary objection is concerned, the learned counsel for the petitioner contended that the provisions of Civil Procedure Code are not applicable to the proceedings under the Act 1948. Under the Act, 1948, no provision has been made which prohibits a Power of Attorney holder to plead and examine himself as a witness. The learned counsel for the petitioner placed reliance on the decision reported in 24(1) GLR 743, in the case of Patel Ramanbhai Mathurbhai And Anr. v. Solanki Shanabhai Naranbhai. Lastly, the learned counsel for the petitioner contended that one of the trustees has also been examined in the case. It is a case where specific Power of Attorney has been given to Shri Revabhai and as such no other trustee has been examined

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the petitioner.

6. The plea of non joinder of parties could have been taken by the trustees and not by the respondent herein. It was a suo-motu proceeding which has been initiated by the Mamlatdar who has given notice to only one of the trustees. The respondent has not raised any objection whatsoever for non joinder of other trustees as party to the proceedings either before the Mamlatdar or before the appellate authority. This objection has been taken by the respondent for the first time in revision application. Leaving apart the question that the respondent could not have raised such objection, two other important questions fall for consideration; namely, whether such objection could have been raised in the revision application and secondly what prejudice has been caused to the respondent. So far as the first question is concerned, the objection regarding the non joinder of parties has to be raised at the first available stage and not in the appeal or revision application. I fail to see how the respondent could have challenged the order of the Mamlatdar and Deputy Collector on this ground. The matter has been decided on merits and when the respondent was not in a position to make out a case for interference on merits, he has raised preliminary objections which were not available to him. The Tribunal has also erred in not considering the substance of the matter. The Tribunal has proceeded too technically in the matter and it has also lost sight of important question that it is

exercising revisional powers. The Tribunal has not considered what locus-standi the respondent had to raise such objection. The Tribunal should have considered the matter on merits. Otherwise also, it should have called upon itself to decide whether all the trustees are necessary parties to the proceeding and whether the Mamlatdar was not competent to decide the matter in absence of all trustees. The Tribunal has not considered that it was suo-motu proceeding initiated by the Mamlatdar and he has given notice to only one of the trustees. Merely on such plea raised by the respondent, the Tribunal could not have allowed the same to the extent of remanding the matter for fresh trial. This plea could have been raised by the trustees and none of the trustees has raised such a plea. In view of these facts, the first ground which has been given by the Tribunal for remanding the matter to the Mamlatdar for fresh inquiry is perverse and cannot be allowed to stand. So far as second ground is concerned, I do not consider it to go on all the grounds raised by the learned counsel for the petitioner as well as decision of this Court. The Tribunal has proceeded as if the Power of Attorney holder was the only witness which has been produced in the proceedings. It has altogether ignored very important fact that one of the trustees has also been examined in the proceedings before the Mamlatdar. Even if the evidence of Power of Attorney holder is excluded from record, still there was evidence of other trustee on record. It is not the case where the Tribunal has reached to the conclusion that if the evidence of the Power of Attorney holder is excluded then there remains no evidence on record from the side of Trust. In a case u/s.32G of the Act 1948, it was for the tenant to establish that he is entitled for purchase of the land in question. Sufficient evidence has been produced by the trustees in the form of statements of one of the trustees that the tenant-respondent was not in possession of the land on 1.4.57, 15.11.69 or at any point of time. The provisions of Civil Procedure Code are also not applicable to the proceedings before the Mamlatdar under the Act 1948. Procedure has to be regulated by the Mamlatdar under the provisions of the Act 1948. The Tribunal has committed serious error which is apparent on the face of the order in remanding the matter only on the ground that the Power of Attorney holder could not have been examined alone. The second ground which has been taken by the Tribunal for remanding the matter to the Mamlatdar is also not sustainable.

7. In the result, this Special Civil Application succeeds and the same is allowed. The order of the

Gujarat Revenue tribunal made in Revision Application Nos. TEN.B.A. 1164/79 and 1165/79, is quashed and set aside. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)